

Form 4

EXHIBIT 2

**Affidavit Accompanying Motion for
Permission to Appeal In Forma Pauperis**
United States Court of Appeals for the Eleventh Circuit

United States of America , Plaintiff

Middle District of Alabama
United States District Court
Case No. 2:05CR204-LSC

v.

Billy R. Mercer, Jr., Defendant

Affidavit in Support of Motion	Instructions
<p>I swear or affirm under penalty of perjury that because of my poverty, I cannot prepay the docket fees of my appeal or post a bond for them. I believe I am entitled to redress. I swear or affirm under penalty of perjury under United State laws that my answers on this form are true and correct. (28 U.S.C. § 1746; 18 U.S.C. § 1621.)</p> <p>Signed: <u>Billy R. Mercer Jr.</u></p>	<p>Complete all questions in this application and then sign it. Do not leave any blanks; if the answer to a question is <input type="checkbox"/> O, <input type="checkbox"/> [none], or <input type="checkbox"/> [not applicable (N/A)] write in that response. If you need more space to answer a question or to explain your answer, attach a separate sheet of paper identified with your name, your case's docket number, and the question number.</p> <p>Date: <u>5/26/06</u></p>

The issues for appeal are:

1. Defendant contends that the search and seizure conducted in his motel room was in violation of the Fourth amendment to the United States Constitution . The defendant has a privacy expectation in his room. United States v. Ramos, 12F3d 1019 (11th Circuit 1994). Therefore, defendant has standing to challenge admission of evidence seized in warrantless search of his premises. See United States v. Eyster, 948 F.2d 1196 (11th Cir. 1991).
2. Defendant contends that his statement to law enforcement was taken in violation of Miranda v. Arizona, 384 US 436 (1966) and was thus inadmissible in his prosecution.
3. Whether an Alabama felony conviction for driving under the influence of alcohol (DUI), constitutes a crime of violence under § 4B1.1 of the United States Sentencing Guidelines . (Case of first impression pending on appeal - U.S. v. McGill, 347 F.Supp. 2d 1210 (M.D. AL 2004).

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0</u>	\$ <u>N/A</u>	\$ <u>0</u>	\$ <u>N/A</u>
Self-employment	\$ _____	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ _____	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____	\$ _____	\$ _____
Gifts	\$ _____	\$ _____	\$ _____	\$ _____
Alimony	\$ _____	\$ _____	\$ _____	\$ _____
Child Support	\$ _____	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ _____	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance premium)	\$ _____	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____
Public assistance (such as welfare)	\$ <u>✓</u>	\$ <u>✓</u>	\$ <u>✓</u>	\$ <u>✓</u>

Other (specify): Work Release \$ 800 \$ N/A \$ 0 \$ 0
 Total Monthly Income \$ 0 \$ ↓ \$ ↓ \$ ↓

2. List your employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
(Self) <u>Mercer Paint CO.</u>	<u>232 Broadway St.</u>	<u>1992 - 2004</u>	<u>2,000.00</u>

3. List your spouse's employment history, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of employment	Gross monthly pay
<u>N/A</u>			

4. How much cash do you and your spouse have? \$ 0

Financial institution	Type of account	Amount you have	Amount your spouse has
<u>No Accounts</u>		\$ <u>0</u>	\$ <u>0</u>
		\$ <u>↓</u>	\$ <u>↓</u>
		\$ <u>↓</u>	\$ <u>↓</u>

If you are a prisoner, you must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attached one certified statement of each account.

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishing.

Home (Value)	Other real estate (Value)	Motor vehicle #1 (Value)	Motor vehicle #2 (Value)	Other assets (Value)	Other assets (Value)
<u>None</u>	<u>None</u>	Make & year: <u>None</u>	Make & year: <u> </u>		
		Model: <u> </u>	Model: <u> </u>		
		Registration #: <u> </u>	Registration #: <u> </u>		

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>None</u>		

7. State the persons who rely on your or your spouse for support.

Name	Relationship	Age
<u>None</u>		

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, semiannually, or annually to show the monthly Rate.

	You	Your Spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$ <u>0</u>	\$ <u>N/A</u>
Are real-estate taxes included? Yes No	\$ _____	\$ _____
Is property insurance included? Yes No	\$ _____	\$ _____
	\$ _____	\$ _____
Utilities (electricity, heating, fuel, water, sewer, and telephone)		
Home maintenance (repairs and upkeep)	\$ _____	\$ _____
Food	\$ _____	\$ _____
Clothing	\$ _____	\$ _____
Laundry and dry-cleaning	\$ _____	\$ _____
Medical and dental expenses	\$ _____	\$ _____
Transportation (not including motor vehicle payments)	\$ _____	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ _____	\$ _____
Insurance (not deducted from wages or included in mortgage payments)	\$ _____	\$ _____
Homeworkers or renters	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments) (specify): _____	\$ _____	\$ _____
Installment payments	\$ _____	\$ _____
Motor vehicle	\$ _____	\$ _____
Credit card (name): _____	\$ _____	\$ _____
Department store (name): _____	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
	\$ _____	\$ _____
Total monthly expense	\$ <u>✓</u>	\$ <u>✓</u>

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes

☒ No

If yes, describe on an attached sheet.

10. Have you paid or will you be paying an attorney any money for services in connection with this case, including the completion of this form? Yes ☐ No ☒

If yes, how much? \$ 0

If yes, state the attorney's name, address, and telephone number:

My father paid the attorney fees at trial.

11. Have you paid or will you be paying anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes

☒ No

If yes, how much? \$ _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the docket fees for your appeal.

13. State the address of your legal residence.

[REDACTED]
[REDACTED]
[REDACTED]

Your daytime phone number: (334) None

Your age: [REDACTED] Your years of schooling: 9th Grade

Your social security number: [REDACTED]

RESIDENT HISTORY REPORT

Page 1 of 1

Montgomery City Jail

05/24/06 14:09

ST 001 / OPR ARB

Booking Number : 6720
 Resident Name : MERCER, BILLY
 Time Frame : 11/30/2005 11:46 - 05/24/2006 13:59

Date	Time	Type	ST	OPR	Receipt #	Amount	Balance
11/30/2005	11:46	Intake	1	arb	A17309	15.00	15.00
12/01/2005	13:48	Order	2	NDW	B24262	14.75	0.25
01/16/2006	13:25	Order	2	edg	B25949	0.20	0.05
02/16/2006	10:31	Add	1	arb	A18725	100.00	100.05
02/16/2006	10:55	Order	2	edg	B27068	38.35	61.70
02/20/2006	11:02	Order	2	edg	B27159	38.35	23.35
02/22/2006	11:10	Add	1	arb	A18804	15.00	38.35
02/22/2006	16:17	Credit	2	edg	B27189	1.91	40.26
02/23/2006	10:29	Order	2	edg	B27301	31.33	8.93
02/24/2006	10:27	Add	1	arb	A18857	50.00	58.93
02/27/2006	11:53	Order	2	jaw	B27428	57.49	1.44
03/02/2006	10:48	Order	2	edg	B27494	1.22	0.22
03/06/2006	15:39	Credit	2	edg	B27678	24.65	24.87
03/09/2006	10:42	Order	2	edg	B27804	22.16	2.71
03/13/2006	10:54	Order	2	edg	B27846	0.31	2.40
03/15/2006	10:58	Add	1	arb	A19161	70.00	72.40
03/16/2006	17:57	Order	2	edg	B27967	66.00	6.40
03/20/2006	10:36	Order	2	edg	B28099	2.13	4.27
03/20/2006	12:28	Add	1	arb	A19241	20.00	24.27
03/23/2006	10:47	Order	2	edg	B28167	23.88	0.39
03/27/2006	10:23	Order	2	jaw	B28294	0.32	0.07
04/12/2006	10:51	Add	1	arb	A19651	1,123.63	1,123.70
04/13/2006	10:23	Order	2	edg	B28835	68.92	1,054.78
04/17/2006	09:52	Order	2	edg	B28907	71.50	983.28
04/20/2006	10:22	Order	2	edg	B29009	64.45	918.83
04/24/2006	09:42	Order	2	edg	B29077	42.23	876.60
04/27/2006	10:42	Order	2	edg	B29173	43.27	833.33
05/01/2006	11:53	Order	2	edg	B29277	11.14	822.19
05/04/2006	10:31	Order	2	jaw	B29387	21.11	801.08
05/08/2006	10:55	Order	2	edg	B29469	29.00	772.08
05/15/2006	10:06	Order	2	edg	B29700	22.04	750.04
05/18/2006	09:45	Order	2	edg	B29792	13.67	736.37
05/22/2006	10:13	Order	2	edg	B29869	48.80	687.57

A. Bibb
 A.R. Bibb
 Commissary Clerk

5-24-06
 Date

Subscribed and sworn to before me in my
 Presence, this 24th day of May
2006, a Notary Public in and for the
 County of Montgomery, State of Alabama
A. J. Hampton
 (Signature) Notary Public
 My Commission Expires March 17, 2009